

PART 46—POLICY REGARDING PARTICIPATION IN NATIONAL PRACTITIONER DATA BANK

Subpart A—General Provisions

Sec.

46.1 Definitions.

46.2 Purpose.

Subpart B—National Practitioner Data Bank Reporting

46.3 Malpractice payment reporting.

46.4 Clinical privileges actions reporting.

Subpart C—National Practitioner Data Bank Inquiries

46.5 National Practitioner Data Bank inquiries.

Subpart D—Miscellaneous

46.6 Medical quality assurance records confidentiality.

AUTHORITY: 38 U.S.C. 501; 42 U.S.C. 11101–11152.

SOURCE: 56 FR 55462, Oct. 28, 1991, unless otherwise noted.

Subpart A—General Provisions

§ 46.1 Definitions.

(a) *Act* means The Health Care Quality Improvement Act of 1986, as amended (42 U.S.C. 11101–11152).

(b) *Claim of medical malpractice* means a written claim or demand for payment based on a physician's, dentist's or other health care practitioner's furnishing (or failure to furnish) health care services and includes the filing of a complaint or administrative tort claim under the Federal Tort Claims Act, 28 USC 1346(b), 2671–2680.

(c) *Clinical privileges* means privileges granted by a health care entity to individuals to furnish health care.

(d) *Dentist* means a doctor of dental surgery or dental medicine legally authorized to practice dental surgery or dentistry by a State (or any individual who, without authority, holds himself or herself out to be so authorized).

(e) *Director* means the duly appointed director of a Department of Veterans Affairs facility or any individual with authorization to act for that person in the director's absence.

(f) *Health care entity* means a hospital, domiciliary, outpatient clinic or any other entity that provides health care services.

(g) *Other health care practitioner* means an individual other than a physician or dentist who is licensed or otherwise authorized by a State to provide health care services.

(h) *Physician* means a doctor of medicine or osteopathy legally authorized to practice medicine or surgery by a State (or any individual who, without authority, holds himself or herself out to be so authorized).

(i) *Professional review action* means a recommendation by a professional review body (with at least a majority vote) to affect adversely the clinical privileges of a physician or dentist and which is taken as a result of a professional review activity based on the competence or professional conduct of an individual physician or dentist in cases in which such conduct affects or could affect adversely the health or welfare of a patient or patients. An action is not considered to be based on the competence or professional conduct of a physician or dentist if the action is primarily based on:

(1) A physician's or dentist's association with, administrative supervision of, delegation of authority to, support for, or training of, a member or members of a particular class of health care practitioner or professional, or

(2) Any other matter that does not relate to the competence or professional conduct of a physician or dentist in his/her practice at a Department of Veterans Affairs health care facility.

(j) *Professional review activity* means an activity with respect to an individual physician or dentist to establish a recommendation regarding:

(1) Whether the physician or dentist may have clinical privileges with respect to the medical staff of the facility;

(2) The scope or conditions of such privileges or appointment; or

(3) Change or modification of such privileges.

(k) *State* means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands,

and any other territories or possessions of the United States.

(l) *State Licensing Board* means, with respect to a physician, dentist or other health care practitioner in a State, the agency of the State which is primarily responsible for the licensing of the physician, dentist or practitioner to furnish health care services.

§ 46.2 Purpose.

The National Practitioner Data Bank, authorized by the Act and administered by the Department of Health and Human Services, was established for the purpose of collecting and releasing certain information concerning physicians, dentists and other health care practitioners. The Act mandates that the Department of Health and Human Services seek to enter into a Memorandum of Understanding with the Department of Veterans Affairs (VA) for the purpose of having VA participate in the National Practitioner Data Bank. Such a Memorandum of Understanding has been established. Pursuant to the Memorandum of Understanding, VA will obtain information from the Data Bank concerning physicians, dentists and other health care practitioners who provide or seek to provide health care services at VA facilities and will also report information regarding malpractice payments and adverse clinical privileges actions to the Data Bank. This part essentially restates or interprets provisions of that Memorandum of Understanding and constitutes the policy of VA for participation in the National Practitioner Data Bank.

Subpart B—National Practitioner Data Bank Reporting

§ 46.3 Malpractice payment reporting.

(a) VA will file a report with the National Practitioner Data Bank, in accordance with regulations at 45 CFR part 60, subpart B, as applicable, regarding any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice. The report will identify the physician, dentist, or other licensed health care practitioner for whose ben-

efit the payment is made. It is intended that the report be filed within 30 days of the date payment is made. (This may not be possible in all cases since the Department of Veterans Affairs is not always notified of such payments within sufficient time to provide the report within 30 days of payment.) The report will provide the following information:

(1) With respect to the physician, dentist or other licensed health care practitioner for whose benefit the payment is made—

- (i) Name,
- (ii) Work address,
- (iii) Home address, if known,
- (iv) Social Security number, if known, and if obtained in accordance with section 7 of the Privacy Act of 1974,
- (v) Date of birth,
- (vi) Name of each professional school attended and year of graduation,
- (vii) For each professional license: the license number, the field of licensure, and the State in which the license is held,
- (viii) Drug Enforcement Administration registration number, if applicable and known,
- (ix) Name of each health care entity with which affiliated, if known;

(2) With respect to the reporting VA facility—

- (i) Name and address of the reporting facility,
- (ii) Name, title and telephone number of the responsible official submitting the report on behalf of the Federal government,
- (iii) Relationship of facility to the physician, dentist or other health care practitioner being reported;

(3) With respect to the judgment or settlement resulting in the payment—

- (i) Where an action or claim has been filed with an adjudicative body, identification of the adjudicative body and the case number,
- (ii) Date or dates on which the act(s) or omission(s) which gave rise to the action or claim occurred,
- (iii) Date of judgment or settlement,
- (iv) Amount paid, date of payment, and whether payment is for a judgment or a settlement,
- (v) Description and amount of judgment or settlement and any conditions

attached thereto, including terms of payment,

(vi) A description of the acts or omissions and injuries or illnesses upon which the action or claim was based, and

(vii) Classification of the acts or omissions in accordance with a reporting code adopted by the Secretary of Health and Human Services.

(b) A copy of the report referred to in paragraph (a) of this section will also be filed with the State Licensing Board in the State(s) in which the practitioner is licensed and with the State Licensing Board in the State in which the act or omission occurred upon which the medical malpractice claim was based.

(c) Payment will be considered to have been made for the benefit of a physician, dentist or other licensed health care practitioner only if the Director of the facility at which the act or omission occurred upon which the malpractice claim was based, affirms a conclusion (of at least a majority) of a peer review body that payment was related to substandard care, professional incompetence or professional misconduct on the part of the physician, dentist or other licensed health care practitioner. For purposes of this part, a peer review body shall have a minimum of three individuals appointed by the facility Director (including at least one member of the profession/occupation of the practitioner(s) whose actions are under review). The conclusions of the peer review body shall, at a minimum, be based on review of documents pertinent to the claim and, to the extent practicable, shall include information collected directly from the individual for whose benefit payment was made. Prior to a determination by the Director, the individual under consideration for reporting shall be afforded the opportunity for discussion with the facility Director and any other individuals designated by the facility Director.

§ 46.4 Clinical privileges actions reporting.

(a) VA will file an original and one copy of an adverse action report with the State Licensing Board in the State in which the facility is located in ac-

cordance with regulations at 45 CFR part 60, subpart B, as applicable, regarding any of the following actions:

(1) An action of a Director after consideration of a professional review action that, for a period longer than 30 days, adversely affects (by reducing, restricting, suspending, revoking, or failing to renew) the clinical privileges of a physician or dentist relating to possible incompetence or improper professional conduct.

(2) Acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding.

(b) The report specified in paragraph (a) of this section will provide the following information—

(1) With respect to the physician or dentist:

(i) Name,

(ii) Work address,

(iii) Home address, if known,

(iv) Social Security number, if known (and if obtained in accordance with section 7 of the Privacy Act of 1974),

(v) Date of birth,

(vi) Name of each professional school attended and year of graduation,

(vii) For each professional license: The license number, the field of licensure, and the name of the State in which the license is held,

(viii) Drug Enforcement Administration registration number, if applicable and known,

(ix) A description of the acts or omissions or other reasons for privilege loss, or, if known, for surrender,

(x) Action taken, date action was made final, length of action, and effective date of the action;

(2) With respect to the VA facility—

(i) Name and address of the reporting facility,

(ii) Name, title, and telephone number of the responsible official submitting the report.

(c) A copy of the report referred to in paragraph (a) of this section will also be filed with the State Licensing Board

§ 46.5

in the State(s) in which the practitioner is licensed. It is intended that the report be filed within 15 days of the date the action is made final, that is, subsequent to any internal appeal.

Subpart C—National Practitioner Data Bank Inquiries

§ 46.5 National Practitioner Data Bank inquiries.

VA will request information from the National Practitioner Data Bank, in accordance with the regulations published at 45 CFR part 60, subpart C, as applicable, concerning a physician, dentist, or other licensed health care practitioner as follows:

(a) At the time a physician, dentist, or other health care practitioner applies for a position at VA Central Office, any of its regional offices, or on the medical staff, or for clinical privileges at a VA hospital or a hospital or other health care entity operated under the auspice of VA;

(b) No less often than every 2 years concerning any physician, dentist, or other health care practitioner who is on the medical staff or who has clinical privileges at a VA hospital or hospital or other health care entity operated under the auspice of VA; and

(c) At other times pursuant to VA policy and needs and consistent with the Act and Department of Health and Human Services Regulations (45 CFR part 60).

Subpart D—Miscellaneous

§ 46.6 Medical quality assurance records confidentiality.

Note that medical quality assurance records that are confidential and privileged under the provisions of 38 U.S.C. 5705 may not be used as evidence for reporting individuals to the National Practitioner Data Bank.

(Authority: 38 U.S.C. 5705)

38 CFR Ch. I (7–1–97 Edition)

PART 47—POLICY REGARDING REPORTING HEALTH CARE PROFESSIONALS UNDER AUTHORITY OF PUBLIC LAW 99–166 AND 38 U.S.C. 501

Subpart A—General Provisions

Sec.

47.1 Definitions.

47.2 Purpose.

Subpart B—Reporting Under Authority of Pub. L. 99–166 and 38 U.S.C. 501

47.3 Reporting to State licensing boards.

AUTHORITY: Pub. L. 99–166, 99 Stat. 941; 38 U.S.C. 501.

SOURCE: 58 FR 48455, Sept. 16, 1993, unless otherwise noted.

Subpart A—General Provisions

47.1 Definitions.

(a) *Act* means section 204 of the act captioned “Veterans Administration Health-Care Amendments of 1985” (Pub. L. 99–166, 99 Stat. 941).

(b) *Dentist* means a doctor of dental surgery or dental medicine legally authorized to practice dental surgery or medical dentistry by a State (or any individual who, without authority, holds himself or herself out to be so authorized).

(c) *Other health care professional* means an individual other than a physician or dentist who is licensed or otherwise authorized by a State to provide health care services (or any individual who, without authority, holds himself or herself out to be so licensed or authorized).

(d) *Physician* means a doctor of medicine or osteopathy legally authorized to practice medicine or surgery by a State (or any individual who, without authority, holds himself or herself out to be so authorized).

(e) *State* means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands